

BEFORE THE INDIAN CLAIMS COMMISSION

THE TUSCARORA INDIAN NATION	)	
	)	
Plaintiff,	)	
	)	
v.	)	Docket No. 321
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: May 14, 1970

FINDINGS OF FACT

1. The plaintiff, the Tuscarora Indian Nation, is an identifiable tribe of American Indians residing in the State of New York and having a tribal organization recognized by the Secretary of the Interior as authorized to represent the tribe and all its members in matters relating to claims under the Indian Claims Commission Act (60 Stat. 1049).

2. The lands which are the subject of the claim filed herein are located in Bertie County, North Carolina, on the south side of the Morratock (now Roanoke) River and are bounded and described as follows:

Beginning at the Mouth of Quitsnoy Swamp, running up the said Swamp Four Hundred and Thirty Poles, to a Scrubby Oak, near the Head of the said Swamp, by a Great Spring; then North Ten Degrees East, Eight Hundred and Fifty Poles, to a Persimmon Tree on the Raquis Swamp; then along the Swamp and Pocoson main Course, North Fifty Seven Degrees West, Two Thousand Six Hundred and Forty Poles to a Hickory on the east Side of the Falling Run, or Deep Creek, and down the various Courses of the said Run to Morattock River; then down the River to the first Station; . . .

By subsequent survey the described tract was found to contain 41,113 acres.

3. The Tuscarora Indians, a group of Iroquoian Indians, originally were situated in the piedmont and coastal plains of North Carolina along the Neuse, Tar and Roanoke rivers. During and at the conclusion of the so-called Tuscarora Wars (1711-1713), a substantial portion of the Tuscaroras moved to Pennsylvania and New York where they resided with various portions of the Five Nations and subsequently in about 1722 became the sixth nation of that confederacy.

4. Around 1711 armed hostilities broke out between the colonials in North Carolina and the Tuscaroras and other Indians which resulted in a serious defeat for the Tuscaroras.

Several of the Tuscarora villages in the Neuse-Pamlico River area of North Carolina refused to join with the Tuscarora hostiles under Chief Hancock in the war against the colonists. The villages remaining loyal to the white colonists were under the leadership of Tom Blount, who was later proclaimed, by the colonial government, as King of the friendly Tuscaroras. At this time, 1712, Blount and the village leaders of the several friendly Tuscarora towns entered into a treaty of aid and assistance with the Colony of North Carolina to aid in defense of the colony and the white settlers against the several marauding bands of Indians in North Carolina.

When the war ended in 1713, the friendly Tuscarora Indians under the leadership of "King" Blount who had assisted the colonists remained in the Colony of North Carolina and were assigned lands on the Neuse

and Pamlico Rivers, in consideration of the aid and assistance to the Colony of North Carolina in ending the Tuscarora War and the continued aid thereafter in keeping the hostile tribes in North Carolina in check.

5. The lands allotted to Blount and the Indians under his care in the Neuse-Pamlico area were endangered by the South Carolina tribes to the degree that Blount requested the Colonial Government of North Carolina that his lands on the Neuse-Pamlico River be exchanged for lands in the northerly area of the state. The request was approved by granting the Tuscarora Indians a tract of 41,113 acres on the north side of the Roanoke River (as described in Finding of Fact No. 2, supra).

6. In 1741 the Governor and Council of North Carolina approved an order for the survey of the boundaries of the 1717 grant. By Act of the General Assembly of the North Carolina Province in 1748 the grant to the Tuscaroras was confirmed, and the lands were defined by metes and bounds. It was provided, however, that any person holding a grant formerly obtained under the late Lords Proprietors <sup>1/</sup> should become entitled to the same upon the Indians deserting or leaving the lands. The Act also prohibited the purchase or occupancy of Indian lands or the ranging of livestock thereon.

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<sup>1/</sup> Before North Carolina became a royal colony in 1729, Carolina lands belonged to eight royal proprietors, known as Lords Proprietors, grantees of Charles II. During the early part of the 18th century, Carolina settlers ordinarily obtained title to lands by grants from the proprietors' representatives and did not negotiate with the Indians for the lands on which they settled.

7. The Tuscaroras resided on the granted lands until 1766 when, at their request, arrangements were made for a substantial number of them to move from North Carolina to New York. Money was advanced to cover the expenses of the removal on the credit of the lands until the General Assembly would approve a sale to raise the money which had been advanced. One hundred and fifty five Tuscaroras left and one hundred and four remained and continued to occupy about one-half of the original grant.

8. As a necessary step to reimburse the money advanced to transport the 155 Indians, which then amounted to £ 2,000 Proclamation Money, the General Assembly passed an Act confirming a lease by the Tuscaroras to Mr. Jones and two other gentlemen, William Williams and Thomas Pugh. The lease, dated July 12, 1766, was for a term of 150 years and purportedly covered a described tract of about 8000 acres, which on subsequent survey actually embraced 21,762 acres, and the total consideration was 1500 pounds Proclamation Money.

9. The migration of Tuscaroras from North Carolina to New York continued until by 1777 a majority of the North Carolina Tuscaroras had joined members of their tribe in New York. Between July 12, 1766, and December 1, 1777, other leases were made by Tuscaroras to various individuals for substantial portions of the remaining Tuscarora lands in North Carolina, although such leases were forbidden and had been declared to be null and void by the Colonial General Assembly Act of 1748.

10. In 1778, the North Carolina Assembly enacted a statute which prohibited purchase, lease, or disposition of Tuscarora lands in Bertie County except by permission of the General Assembly; confirmed the 150-year lease to Jones, Williams, and Pugh on Tuscarora lands, and subleases thereunder; and confirmed other 99-year leases of the land, subject to modification or other appropriate action for fraud or unfairness to the Indians under procedures described in the Act. Five Commissioners, at least four of whom appear to have been the Indians' lessees, were appointed under the statute to protect the lands from other white intruders and to assist in collecting rents and demands owing the Indians.

According to data from Bertie County records at Windsor, North Carolina, and from other sources here in evidence, at least 8 leases granted between 1785 and 1789 for 99-year terms, covering approximately 15,940-1/2 acres, were validated by the 1778 Act.

The last section of the 1778 Act provided that at the expiration of the leases on the Bertie County lands, the lands would revert to the State if the Tuscarora Nation were to become extinct. The 1778 Act provided also that the Tuscarora's Bertie County lands would become the property of the State whenever the said Nation became extinct or the Indians entirely abandoned or removed themselves from the lands and every part thereof.

11. In 1790 Congress adopted the Trade and Intercourse Act. There have been different versions of that Act which is still in

effect as section 2116 of the Revised Statutes, codified at 25 U.S.C. sec. 177. The Act forbade any sale or conveyance of Indian lands without the consent of the Federal Government.

12. In 1801 a chief of the Tuscarora Nation, Saccarusa, addressing the Secretary of War, requested the advice and assistance of the President regarding a proposed sale of the Tuscaroras' North Carolina land in order to acquire more land in the vicinity of Niagara County, New York, where the Tuscaroras were then living. The Tuscarora chief stated at the time that three hundred Tuscaroras made up the Tuscarora Nation, only a few of whom remained in North Carolina, and added that 100 of them had migrated from North Carolina about 35 years earlier.

In response to the request by the Tuscarora Nation, the President in 1801 appointed William R. Davie Commissioner to attend negotiations in North Carolina between the Tuscaroras from New York and the North Carolina State representatives. Davie was authorized to give the necessary sanction and consent to terms which the Tuscarora chiefs and the legislature of North Carolina might agree on, consistent with the laws and the Constitution. The directions to War Department representatives accompanying the Indians as well as to Commissioner Davie evidence the fact that the United States was participating with a view of protecting the interest of the Indians in the negotiations. The President's appointment of Davie as commissioner representing the United States expressly referred to the requirements of the Trade and Intercourse Act of 1799 as warranting participation by the

United States stating that the appointment was made to enable the Indians to cede their North Carolina lands "\*\*\* in the manner prescribed by the Act of Congress passed on the third day of March one thousand seven hundred and ninety nine entitled 'An Act to regulate trade and intercourse with the Indian Tribes and to preserve peace on the Frontiers'".

13. A proposed treaty dated December 4, 1802, between chiefs of the Tuscarora Nation and William R. Davie, Commissioner of the United States provided that all right, interest, and claim of the Tuscarora Nation to the Bertie County lands would cease after July 12, 1916, if North Carolina passed legislation authorizing the leasing of unleased lands; permitting existing leases on the lands to be extended until July 12, 1916; and providing that the occupancy and possession of the tenants should be held and deemed the occupancy and possession of the Tuscarora Nation, as if the Indians actually resided on the said lands.

Article 2 of the treaty provided that it would be considered a permanent adjustment of claims between the Tuscarora Nation and the State of North Carolina as soon as the state met the conditions set out in Article I and as soon as it was ratified by the President of the United States, by and with the advice and consent of the Senate.

The treaty was unanimously approved by the Senate on March 1, 1803, but there is no evidence that it was ever signed by the President.

14. On December 16, 1802, the North Carolina Assembly passed an Act which was in compliance with the agreed terms set forth in the treaty with Commissioner Davie. The Act also provided for the appointment of three commissioners to supervise execution of the leases and to be responsible for collecting and turning the rentals over to the Indians.

15. The Commissioners appointed under the provisions of the Act had the lands surveyed and determined that only 3,411 acres of the Tuscaroras' lands were not covered by existing leases. By June 20, 1803, a total of 2,917-1/2 acres had been leased for terms which would expire July 12, 1916. The total consideration for the leases was \$20,966.60. Of that sum \$3,741.51 had been received in cash and secured notes taken for the balance, of which \$15,724.65 was to be paid in three annual installments and the remaining \$1500.00 on June 15, 1807.

16. The United States took an active interest in the leasing of the lands and required the Agent for the Tuscaroras to advise the President and the Secretary of War before extending existing leases or compromising arrears. The United States, on behalf of the Tuscarora Nation, entered into negotiations with the Holland Land Company for the purchase of land adjoining the reservation in New York, then occupied by the Tuscaroras. The lands were to be paid for with funds received from rentals of the North Carolina lands. The purchase was concluded in



November 1804, and the Secretary of War agreed to pay the Holland Land Company a net price of \$13,752.83 for 4,329.87 acres. The last installment was paid in 1807.

17. Thereafter some tenants under a lease originally entered into in 1775 were delinquent in their payments, and the Tuscaroras instituted suit in the North Carolina courts. The lessees claimed that the Indians having removed themselves from the land, the lessees had become entitled to possession under title derived from a 1726 grant and the Act of 1748. The court held that the 1717 grant had vested title in the Tuscarora Tribe absolutely and unconditionally, and the 1748 Act was in derogation of the rights vested in the Tuscaroras. But, in any event, it had been changed by the Acts of 1778 and 1802, the latter of which provided that possession of the lessees should be considered possession of the Indians. Thus removal of the Tuscaroras from the land could not prejudice their claim to the rentals due on the leases. Sacarus and Longboard v. William King's Heirs, etc., 4 North Carolina Reports 316, 2 Carolina Law Repository 451, (1818).

18. Between 1820 and 1828 the Tuscarora Indians requested that North Carolina repeal the 1802 Act to the extent that it extinguished their reversion in the Bertie County lands. In support thereof, they submitted a memorial to the State Legislature in 1828, alleging that they were aggrieved by the 1802 Act; that they had not intended to dispose of the reversion in their lands; that they did not so understand the matter.

A committee appointed by the State Legislature to investigate reported that the law of 1802 authorizing the Indians to extend existing leases and issue new leases on their lands was not adequate consideration for the surrender by the Indians of the reversion in their lands. A committee was appointed to negotiate with the Indians and report to the legislature.

The conclusion of the committee was that the 1802 Act was the result of an incorrect understanding concerning the reversion provisions upon expiration of the outstanding lease. The only consideration received by the Indians for the surrender of their reversion was permission to extend their short leases, permission to lease their unleased lands, liberty to leave (i.e. depart from) the undemised part of their lands without forfeiture, and assistance from the legislature in collecting their rents.

The report observed that North Carolina wanted its relations with the Indians to be dictated by a just, humane, and liberal policy which required that some compensation be made to the Indians for the surrender of their reversion to the state by the Act of 1802. Recognizing that the Tuscaroras had no recourse in law, the committee recommended that the state sell the reversion in the Bertie County lands, the proceeds of the sale to go to the Indians as compensation for the reversion.

On the basis of the report, the North Carolina Assembly enacted the 1829 Act directing the public sale of the reversion in the

Tuscarora lands, the proceeds to be paid to the Indians, and the Indians were to give a release of all claim and pretense of title to the lands.

19. On March 17 and 18, 1829, the Commissioners appointed by the General Assembly sold the reversionary interest in 30,141-1/3 acres for a total sales price of \$2,977.87. After collection of the notes given on the purchases, North Carolina paid the Tuscarora Nation \$3,220.71. That payment, in 1832, was made to New York Congressman Bates Cook who acted as agent for the Tuscaroras.

On November 19, 1831, the Tuscarora Chiefs executed a release which was in the form of a deed by which the Indians granted and confirmed to the people of North Carolina forever all lands in that state.

20. In 1917 the Tuscaroras asked the United States to institute proceedings to have the North Carolina lands recovered. The Commissioner of Indian Affairs instituted an investigation of the history and status of the lands. The report, in evidence as defendants Exhibit 2, contains a detailed review of the history of the dealings with the Tuscaroras and the North Carolina tract. Included in that report is a two page summary of the county records showing all of the transactions involving the Tuscarora tract. The investigating agent of the Department of the Interior, John R. Reeves, estimated the total consideration paid to the Tuscaroras from all of the transactions at about \$50,000.00. <sup>2/</sup>  
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<sup>2/</sup> A precise computation cannot easily be made since the consideration for the early leases was in "proclamation money" of Colonial North Carolina and, in some instances, included goods.

The report concluded that the United States had consented to the provisions contained in the 1802 Act of the North Carolina Legislature; that the Indians had been fairly and adequately compensated for their lands; and that there was no basis for instituting proceedings to recover the lands for the Indians.

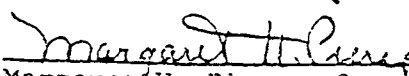
Conclusions of Law

The Commission concludes as a matter of law that:


1. The plaintiff Tuscarora Nation is a proper party to prosecute the claims herein presented.

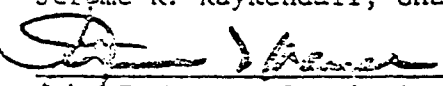
2. There was no obligation on the part of the defendant to institute proceedings to recover lands in North Carolina for the Tuscarora Indians.

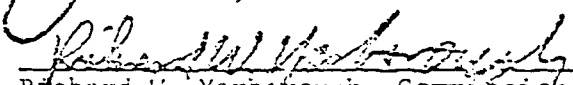
3. The Tuscarora Indians were not adequately compensated in 1802 when, by Act of the North Carolina legislature, they were deprived of the reversionary rights on July 12, 1916, to the lands in North Carolina described in Finding of Fact No. 2. The defendant would be liable under obligations imposed by the Trade and Intercourse Act if the subsequent sale in 1829 of such reversionary interest and payment of the proceeds to the Tuscarora Indians was not a fair and adequate compensation for such interest.

  
Margaret H. Pierce, Commissioner

  
Brantley Blue, Commissioner

  
Jerome K. Kuykendall, Chairman

  
John T. Vance, Commissioner

  
Richard W. Yarbrough, Commissioner